

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KHALIMA NIX DIKHANOVA, on behalf of	:	Civ No:
herself and all others similarly situated,	:	
	:	<u>COMPLAINT</u>
	:	
Plaintiff,	:	FLSA COLLECTIVE
-against-	:	ACTION AND RULE 23
	:	CLASS ACTION
S & A UNIFIED HOME CARE INC.	:	
	:	
	:	
Defendant.	:	
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Plaintiff KHALIMA NIX DIKHANOVA, on behalf of herself and all others similarly situated, by and through her attorneys, Naydenskiy Law Group, P.C., alleges upon personal knowledge as to herself and upon information and belief as to other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiff KHALIMA NIX DIKHANOVA (referred to herein as “Plaintiff”) was employed by S & A UNIFIED HOME CARE INC. (referred to herein as “Defendant”) as a non-exempt employee subject to the wage and overtime provisions of the Fair Labor Standards Act of 1938 (hereinafter referred to as “FLSA”), as amended, 29 U.S.C. § 201 *et. seq.* and the New York Labor Law (hereinafter referred to as “NYLL”).

2. Plaintiff brings this action, on behalf of herself and other employees similarly situated, to remedy violations of the Fair Labor Standards Act, as amended, 29 U.S.C. § 201 et seq. (“FLSA”). Plaintiff seeks, for herself and similarly situated employees, unpaid overtime wages, liquidated damages, reasonable attorneys’ fees and

costs, and all other appropriate legal and equitable relief, pursuant to 29 U.S.C. §§ 216(b) and 217, and other applicable federal law.

3. Plaintiff also bring this action, on behalf of herself and other employees similarly situated, to remedy violations of the New York State Labor Law, including N.Y. Lab. L. §§ 190 et seq., §§ 650 et seq. (“NYLL”), and 12 NYCRR § 142-2.2. Plaintiff seeks, for herself and all other similarly situated employees, unpaid overtime wages, statutory damages, interest, reasonable attorneys’ fees and costs, liquidated and other damages, and all other appropriate legal and equitable relief, pursuant to the NYLL §§ 198, 663.

JURISDICTION AND VENUE

4. Jurisdiction of this Court over this controversy is based upon 29 U.S.C. § 201 *et. seq.*, and 28 U.S.C § § 1331.

5. This Court has jurisdiction over all state law claims brought in this action pursuant to 28 U.S.C. § 1367.

6. Venue is proper within this District pursuant to 28 U.S.C. § 1391, because Defendant S & A UNIFIED HOME CARE INC. maintains its principal place of business in, does business in, and resides in, this District. Venue is further proper within this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred within this District.

7. Accordingly, this action properly lies in the Eastern District of New York, pursuant to 28 U.S.C. 1391.

THE PARTIES

8. At all times relevant to the complaint, KHALIMA NIX DIKHANOVA was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e) and NYLL § 190(2).

9. Defendant employed Plaintiff as a home health aide and/or home attended (“home health aide”), as described herein, from in or around October 18, 2016 to the present.

10. Plaintiff’s written consent to sue form is attached hereto as Exhibit “A”.

11. Defendant S & A UNIFIED HOME CARE INC. is a New York Corporation with its principal place of business located at 2036 McDonald Avenue, Brooklyn, New York 11223.

12. At all times relevant hereto, Defendant was an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d) and NYLL § 190(3).

13. At all times relevant hereto, Defendant’s annual gross volume of sales made or business done is not less than \$500,000.00 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

FACTUAL ALLEGATIONS

14. Defendant employed Plaintiff as a full-time Home Health Aide. Plaintiff’s duties include household chores, hygiene assistance, personal healthcare and running errands for the persons to whom Defendant assigned her (“consumer”).

15. From October 18, 2016 until on or around February 21, 2017 (“Plaintiff’s relevant time period”), Defendant scheduled Plaintiff to work 7 consecutive 24 hour shifts.

16. Accounting for sleep and meal time, throughout Plaintiff's relevant time period, Plaintiff worked ninety-one (91) hours per work week.

17. Defendant paid Plaintiff a daily rate of pay of one hundred and sixty-five dollars (\$165) for thirteen (13) hours per work per day.

18. Defendant did not properly compensate Plaintiff, the FLSA Collective Plaintiffs, and the Class Members at the lawful overtime rates of one and one-half times their regular hourly rates of pay as required by law for all hours worked in excess of forty (40) hours per week.

19. Plaintiff, the FLSA Collective Plaintiffs, and the Class Members regularly worked over 40 hours per workweek. Despite Plaintiff, the FLSA Collective Plaintiffs, and the Class Members regularly working in excess of 40 hours per week, Defendant failed to pay them overtime premiums as required by law.

20. Defendant violated NYLL § 195(3) by failing to furnish Plaintiff and the Class Members with a statement with every payment of wages, listing, among other things, hours worked, rates paid, gross wages, deductions and net wages, and an explanation of how such wages were computed.

21. Defendant knew of, and/or showed reckless disregard for, the practices by which Plaintiff and other similarly situated employees of Defendant were not paid overtime premiums for all hours worked in excess of 40 hours in a week. Defendant knew that the nonpayment of overtime premiums would economically injure Plaintiff, the FLSA Collective Plaintiffs, and the Class Members, and that they violated the FLSA and the NYLL.

22. Defendant committed the foregoing acts knowingly, intentionally and

willfully against the Plaintiff, the FLSA Collective Plaintiffs, and the Class Members.

COLLECTIVE ACTION ALLEGATIONS

23. Plaintiff brings the First Claim for Relief as a collective action pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of all persons employed by Defendant as home health aides and scheduled to work four (4) or more 24 hour shifts from January 1, 2015. All said persons, including Plaintiff, are referred to herein as the “FLSA Collective Plaintiffs”.

24. At all relevant times, Plaintiff and the other FLSA Collective Plaintiffs are and have been similarly situated, have had substantially similar job requirements, job duties and pay provisions, and are and have been subject to Defendant’s decision, policy, plan, practice, procedure, routine and rules to willfully fail and refuse to pay them the legally required overtime premium for all hours worked in excess of forty (40) hours per workweek. The claims of the Plaintiff herein are essentially the same as those of the other FLSA Collective Plaintiffs.

25. Other home health aides scheduled to work four (4) or more 24 hour shifts, currently or formerly employed by Defendant should have the opportunity to have their claims for violations of the FLSA heard. Certifying this action as a collective action under the FLSA will provide other construction workers to receive notice of the action and allow them to opt in to this action if they so choose.

26. The First Claim for Relief is properly brought under and maintained as an opt-in collective action pursuant to §216(b) of the FLSA, 29 U.S.C. 216(b). The FLSA Collective Plaintiffs are readily ascertainable. For purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendant.

Notice can be provided to the FLSA Collective Plaintiffs via first class mail to the last addresses known to Defendant.

RULE 23 CLASS ALLEGATIONS – NEW YORK

27. Plaintiff brings the Second and Third Claims for Relief pursuant to the Fed. R. Civ. P. (“FRCP”) Rule 23, unpaid overtime, wage statements violations and other damages on behalf of all individuals employed in the State of New York by Defendant as home health aides and scheduled to work four (4) or more 24 hour shifts from January 1, 2015 (the “Class Period”). All said persons, including Plaintiff, are referred to herein as the “Class Members” and/or the “Class”.

28. The number, names and addresses of the Class Members are readily ascertainable from the records of the Defendant. The dates of employment and the rates of pay for each Class Member, the hours assigned and worked, and the wages paid to them, are also determinable from Defendant’s records. Notice can be provided by means permissible under FRCP Rule 23.

29. The proposed Class is so numerous that joinder of all Class Members is impracticable, and the disposition of their claims as a Class will benefit the parties and the Court. While the precise number of such persons is unknown to the Plaintiff and is presently within the sole control of Defendant, Plaintiff believes that through discovery he will obtain evidence to establish that there are at least 40 members of the Class.

30. Plaintiff’s claims are typical of those claims of the Class Members, and the relief sought is typical of the relief which would be sought by each Class Member in separate actions. All the Class Members were subject to the same corporate practices of Defendant, in that they were not compensated for overtime hours worked as required by

12 NYCRR § 142-2.2, and that Defendant failed to provide them with proper notices and wage statements as required by NYLL §195. Defendant' corporate-wide policies and practices affected all Class Members similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each Class Member.

31. As fellow employees of Defendant, which failed to adequately compensate Plaintiff and the members of the Class as required by law, Plaintiff and the other Class Members sustained similar losses, injuries and damages arising from the same unlawful policies, practices and procedures.

32. Plaintiff is able to fairly and adequately protect the interests of the Class and has no interests antagonistic to the Class. Plaintiff has retained Gennadiy Naydenskiy, Esq., a competent and experienced employment litigator.

33. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendant. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries and damages suffered by each of the individual Class Members are relatively small in the sense pertinent to a class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Class Members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual

litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Class, establishing incompatible standards of conduct for Defendant and resulting in the impairment of Class Members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

34. Upon information and belief, employees of Defendant in these types of actions are often afraid to individually assert their rights out of fear of direct or indirect retaliation and former employees are fearful of bringing individual claims because the fear that doing so could harm their employment, future employment, and future efforts to secure employment. A class action provides Class Members who are not named in the Complaint a degree of anonymity which allows for the vindication of their rights while eliminating or reducing these risks.

35. The questions of law and fact common to the Class predominate over any questions affecting only individual Class Members, including: (a) whether Defendant required Class Members to work uncompensated overtime as required by 12 NYCRR § 142-2.2, and (b) whether Defendant provided Class Members with sufficiently detailed wage statements as required by NYLL § 195(3).

36. Absent a class action, many of the Class Members likely will not obtain redress of their injuries and Defendant will retain the proceeds of their violations of the NYLL.

FIRST CLAIM FOR RELIEF

(Failure to Pay Overtime Wages – FLSA, Brought by Plaintiff on Behalf of Herself and the FLSA Collective Plaintiffs)

37. Plaintiff, on behalf of herself and the FLSA Collective Plaintiffs, realleges and incorporates by reference all previous paragraphs as if they were set forth again herein.

38. Throughout the statute of limitations period covered by these claims, Plaintiff and the FLSA Collective Plaintiffs regularly worked in excess of forty (40) hours per workweek.

39. At all relevant times, Defendant willfully, regularly, repeatedly and knowingly failed to pay Plaintiff and the FLSA Collective Plaintiffs the required overtime rates for all hours worked in excess of forty (40) hours per workweek.

40. Plaintiff, on behalf of herself and the FLSA Collective Plaintiffs, seeks damages in the amount of their respective unpaid overtime compensation, liquidated (double) damages as provided by the FLSA for overtime violations, attorneys' fees and costs, and such other legal and equitable relief as this Court deems just and proper.

SECOND CLAIM FOR RELIEF

(Failure to Pay Overtime Wages – NYLL, Brought by Plaintiff on Behalf of Herself and the Class Members)

41. Plaintiff, on behalf of herself and the Class Members, realleges and incorporates by reference all previous paragraphs as if they were set forth again herein.

42. It is unlawful under New York law for an employer to suffer or permit a non-exempt employee to work without paying overtime premiums for all hours worked in excess of forty (40) hours in any workweek.

43. Throughout the Class Period, Defendant willfully, regularly, repeatedly and knowingly failed to pay Plaintiff and the Class Members at the required overtime rates for all hours worked in excess of forty (40) hours per workweek.

44. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff and the Class Members have sustained damages, including loss of earnings, in an amount to be established at trial.

45. Plaintiff, on behalf of herself and the Class Members, seek damages in the amount of their respective unpaid wages, overtime compensation, liquidated damages, prejudgment interest, attorneys' fees and costs, pursuant to NYLL, and such other legal and equitable relief as this Court deems just and proper.

THIRD CLAIM FOR RELIEF

(Wage Statement Violations – NYLL §195, Brought by Plaintiff on Behalf of Herself and the Class Members)

46. Plaintiff, on behalf of herself and the Class Members, realleges and incorporates by reference all previous paragraphs as if they were set forth again herein.

47. Defendant failed to supply Plaintiff and each Class Member with an accurate statement of wages as required by NYLL § 195, containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked,

including overtime hours worked if applicable; deductions; allowances, if any, claimed as part of the minimum wage; and net wages.

48. Due to Defendant's violations of the NYLL, Plaintiff and the Class Members are entitled to recover damages and/or statutory penalties from Defendant, as provided for by NYLL § 198, as well as reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, the FLSA Collective Plaintiffs, and the Class Members, prays for relief as follows:

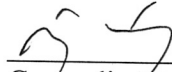
- (a) Designation of this action as a collective action on behalf of the FLSA Collective Plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);
- (b) Certification of this action as a class action;
- (c) Designation of the Named Plaintiff as the Representative of the FLSA Collective Plaintiffs and Class Representative of the Class;
- (d) An award of damages, according to proof, including FLSA and NYLL liquidated damages, and interest, to be paid by Defendant;
- (e) Costs of action incurred herein, including expert fees;
- (f) Attorneys' fees, including fees pursuant to 29 U.S.C. § 216, N.Y. Lab. L. §§ 663, 198 and other applicable statutes;
- (g) Pre-Judgment and post-judgment interest, as provided by law; and

- (h) Such other and further legal and equitable relief as this Court deems necessary, just and proper.

Dated: April 4, 2017

Respectfully submitted,

NAYDENSKIY LAW GROUP, P.C.



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*Attorney for Plaintiff, Proposed Collective Action
Plaintiffs and Proposed Class Members*

EXHIBIT A

I am a current or former employee of S & A UNIFIED HOME CARE INC., and/or related entities/individuals. I hereby consent and agree to be a party Plaintiff in this Action to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. 216(b).

I hereby designate Naydenskiy Law Group, P.C. to represent me in this Action and I also consent and agree, if such is necessary, to file this claim on behalf of all others similarly situated.

Signed this 3 day of 22, 2017.



Signature

Nix Dekhkanova Kholimo
Full Legal Name (print)